

In the Court of Appeals of the State of Alaska

David Christopher Nordlund,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13053**

Order

Date of Order: **5/25/2021**

Trial Court Case No. **1KE-17-00335CI**

The Appellant, David C. Nordlund, appealed the superior court’s dismissal of his application for post-conviction relief, which challenged the parole board’s extension of his period of parole in light of AS 33.16.220(I), as amended by Senate Bill 91. But before his appeal was resolved, this Court dismissed the appeal because it was moot. The appeal became moot on June 22, 2018, when Mr. Nordlund was no longer under supervision or incarcerated in connection with this case.

Mr. Nordlund was represented by counsel at public expense in this appeal. Under Alaska Appellate Rule 209(b)(5), at the conclusion of any appellate case in which a criminal defendant is represented by court-appointed counsel, the Clerk of the Appellate Courts is directed to “enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant’s conviction was reversed by the appellate court.” Because Mr. Nordlund was represented by court-appointed counsel in this appeal, because this appeal was a felony merit appeal — and because Mr. Nordlund’s conviction was not reversed — the Appellate Court Clerk’s Office notified Mr. Nordlund that it intends to enter judgment against him in the amount of \$1500 for the cost of counsel. *See* Alaska Appellate Rule 209(b)(6).

Mr. Nordlund now seeks judicial reconsideration of the Appellate Clerk’s decision. *See* Alaska Appellate Rule 503(h)(2)(A).

Appellate Rule 209(b)(5) and (6) require criminal defendants whose convictions are not reversed on appeal to reimburse to the government a portion of the cost of the attorneys who represent them at public expense. In his opposition to the entry of judgment for the cost of appellate counsel, Mr. Nordlund argues (among other things) that because his appeal was dismissed — through no fault of his own — this Court should not hold him liable for the costs incurred for his appointed attorney.

Considering the history of this appeal, the Court agrees with Mr. Nordlund. Although his appeal was filed just six months before his scheduled release date, the agency representing him did not move to expedite this case. To the contrary, on May 21, 2018 — just a month before Mr. Nordlund’s scheduled release date — the agency requested and received a 390-day extension under this Court’s Standing Order No. 12. In short, the agency overlooked the fact that its requested due date for the Appellant’s opening brief was a year after the case became moot. Nearly three years later, through no fault of Mr. Nordlund, this appeal was dismissed as moot.

This Court may, under Appellate Rule 521, relax the appellate rules where strict adherence to them will work surprise or injustice. Because strictly adhering to Appellate Rule 209 in this case would work an injustice, the decision of the Appellate Clerk to enter a judgment of \$1500 against Mr. Nordlund is **REVERSED**. Mr. Nordlund will not be required to pay any portion of the cost for his appointed appellate counsel in this case.

Entered at the direction of Chief Judge Allard.

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Clerk of the Appellate Courts


Julie Kentch, Deputy Clerk

cc: David Nordlund at GCCC

Distribution:

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Horowitz, Michael, Public Defender - Contract
McFarland, Renee
Cicotte, Matthias R.

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McFarland, Renee
Cicotte, Matthias R.